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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,251	03/08/2001	Andrew Paul Maxwell Salmon	1171/39247/91	5561
7590 02/10/2004 Trexler, Bushnell, Giangiorgi, Blackstone & Marr, Ltd. 105 West Adams Street, Suite 3600 Chicago, IL 60603			EXAMINER FOX, JOHN C	
			ART UNIT 3753	PAPER NUMBER 29

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/802,251

Applicant(s)

SALMON ET AL.

Examiner

John Fox

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3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 20-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12/10, 13, 20-30 is/are rejected.
- 7) ☒ Claim(s) 11, 12/11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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This action is responsive to the communication filed December 26, 2003.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 20-25 are rejected under 35 U.S.C. § 103 as being unpatentable over Barsky '896(US 5,649,896) in view of Moll et al '003 (US 5,817,003) and further in view of Beld et al '570 (US 3,858,570), of record. Barsky '896 teach an incubator with electrothermal covers 68, 69, sides 24, 26, 28, 30, and element 77 which goes under mattress 76, all of which are controlled to provide radiant heat to the infant when the overhead radiant warmer is off, or in addition to the overhead warmer. Barsky '896 also provide humidity and control of that. Barsky '896 teaches controlling the heaters in response to sensors but does not talk about the infants skin temperature. Moll et al '003 show an incubator including a radiant heater 56 and controller 200 for controlling the heater 56, among other things, so the skin temperature is maintained at a set point, see column 9, lines 12-16, for example 35° C, +/- 0.3° C. Moll et al use a

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temperature probe 202 attached to the baby. It would have been obvious for one of ordinary skill in the art to have used such a control system as taught by Moll et al in the incubator of Barsky '896 to desirably keep the infants skin temperature at the desired set point, or range.

Beld et al '570 (US 3,858,570) teach an incubator with an overhead heater 240 in a rigid, rounded hood. It would have been obvious for one of ordinary skill in the art to have used such a rigid, rounded hood in the incubator of Barsky '896, as modified, to make it easier to see into the incubator or to reduce sharp edges hazardous to nursery personnel.

The electrothermal covers include film 20 supported thereby.

Claims 1-10, 12/10, 13 and 29 are rejected under 35 U.S.C. § 103 as being unpatentable over Barsky '896 in view of Moll et al '003 as applied above, and further in view of Donnelly et al '002 (US 5,817,002). Donnelly et al '002 teach an incubator where all or parts of the cover can be a liquid crystal light shutter to allow selective darkening of the incubator, see column 5, lines 40-45. It would have been obvious for one of ordinary skill in the art to have provided such liquid crystal light shutters

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in the covers 68, 69 of Barsky '896, as modified, to similarly allow for the selective darkening of the Barsky '896 incubator. As to claim 4, it is considered an obvious matter of design choice to make the frames of the covers from extruded aluminum, for example, which would be opaque. As to claim 12, Barsky '896 teaches thermal sensor 80 at the top of the mattress. It would be obvious to use this as the skin sensor.

Applicant's remarks have been fully considered but are not deemed to be persuasive. Barsky '896 clearly contemplates using the cover radiant heat alone. According to Donnelly et al '002, radiant warmers typically include infrared heaters for use when the cover is off the warmer. The opaque cover of Donnelly et al '002 is for when the infant is sleeping, with the cover closed, but the need for heat regulation is continuous whether the infant is sleeping or not. So the combination of references suggests cover radiant heat in the opaque state. It is believed that a warm body will radiate to a cooler body or surface regardless of whether the warm body is transparent or opaque.

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Claims 26-28 and 30 are rejected under 35 U.S.C. § 103 as being unpatentable over Barsky '896 in view of Moll et al '003 and further in view of Beld et al '570 (US 3,858,570) as applied to claims 20-25 above, and further in view of Donnelly et al '002 (US 5,817,002). Donnelly et al '002 teach an incubator where all or parts of the cover can be a liquid crystal light shutter to allow selective darkening of the incubator, see column 5, lines 40-45. It would have been obvious for one of ordinary skill in the art to have provided such liquid crystal light shutters in the covers 68, 69 of Barsky '896, as modified, to similarly allow for the selective darkening of the Barsky '896 incubator.

Claims 11 and 12/11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a).

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Applicant is reminded of the extension of time policy as set forth in 37

C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.


Any inquiry concerning this communication should be directed to Examiner Fox at (703) 308-2595 or [John.Fox@uspto.gov](mailto:John.Fox@uspto.gov). Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861. The fax number for TC 3700 is 703-872-9302. For responses after final the fax number is 703-872-9303. The Supervisory Primary Examiner

Serial Number: 09/802251

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for Art Unit 3753 is John Rivell who can be reached at (703) 308-2599 or  
at [John.Rivell@uspto.gov](mailto:John.Rivell@uspto.gov).

  
JOHN FOX  
PRIMARY EXAMINER  
ART UNIT 3753

jcf  
February 6, 2004